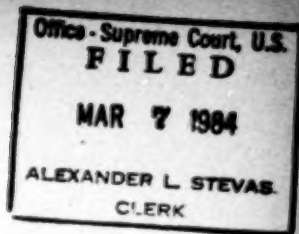


88 - 1586



CASE NO. \_\_\_\_\_

IN THE UNITED STATES SUPREME COURT

SPRING TERM

GRINNELL MUTUAL REINSURANCE COMPANY,  
AN IOWA CORPORATION,

PETITIONER,

vs.

EMPIRE FIRE & MARINE INSURANCE COMPANY,  
A NEBRASKA CORPORATION, ET AL,

RESPONDENTS.

= = = = =  
ON WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT  
= = = = =

PETITION FOR WRIT OF CERTIORARI

= = = = =

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PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
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- - -

QUESTIONS PRESENTED FOR REVIEW

1. As long as a truck under permanent ICC lease to an authorized and regulated ICC common carrier, has attached to it and displays an ICC permit number and insignia of the ICC common carrier, and as long as no formal transfer possession of the

truck has been made back to the non-regulated owner, will the regulated ICC motor carrier be completely responsible for the operation of the truck while the ICC lease is in effect, and will the regulated ICC carrier be deemed to have the exclusive possession, control and use of the truck equipment for the duration of the ICC lease?

- II. When the regulated ICC carrier is subject to the leasing rules and regulations promulgated by the Interstate Commerce Commission, and when the regulated ICC carrier has entered into lease agreements with the non-regulated truck owner, which release agreements provide that the carrier shall provide and maintain in force for the leased motor vehicle public liability insurance, is the

regulated ICC carrier solely obligated to provide liability insurance coverage covering the leased truck while the ICC lease is in effect?

- III. In light of the ICC rules and regulations concerning lease and interchange of vehicles, and when an ICC lease is in effect between the truck owner and the regulated carrier, does an exclusion in the non-regulated truck owner's insurance policy excluding coverage for any automobile while rented to others by the insured, exclude any coverage for the insured vehicle while it is covered by the ICC lease and while the ICC lease regulations are in effect and while the truck still carries the ICC insignia and permit number of the regulated ICC carrier? (In this case, the above insurance

contract was issued to the non-regulated truck owner and not to the regulated ICC carrier.)

IV. Is a policy of insurance issued to insure the garage operations and related service type operations, intended to cover the liability incurred when a truck engaged in interstate commerce transportation operations, and which truck has attached to it the ICC permit and insignia number of the regulated ICC carrier, is involved in a motor vehicle accident causing injury to third-parties?

V. When a truck engaged in interstate commerce operations, and which contains the ICC permit number and insignia number of the regulated ICC carrier, is involved in an accident, is the regulated ICC carrier whose permit and insignia is attached to

the truck at the time, solely responsible for any damage or liabilities arising out of the operation of the truck?



**LIST OF ALL PARTIES TO THE PROCEEDING IN  
THIS COURT WHOSE JUDGMENT IS SOUGHT TO BE  
REVIEWED**

1. Grinnell Mutual Reinsurance Company
2. Empire Fire & Marine Insurance Company
3. Matthew Youngren, an infant
4. Michael Youngren, an infant
5. John Youngren
6. Timothy Youngren
7. Sheri Emch
8. Hamel Service Company, Inc., an Illinois corporation
9. Gilbert Culver, a resident of the State of Illinois
10. Excalibur Insurance Company of Minnesota, a Texas Corporation
11. Riechmann Enterprises, Inc., a Missouri corporation

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TABLE OF AUTHORITIESCases:

1. Krieder Truck Service, Inc.  
v. Augustine, 394 N.E. 2d 1179  
(Ill. 1979).....p. 8
2. Schedler vc. Rowley Interstate  
Transport Co., 368 N.E. 2d 128  
(Ill. 1977).....p. 8
3. Transamerican Freight Lines  
Inc., v. Brada Miller Freight  
Systems, Inc., 423 U.S. 28, 46  
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4. Wellman v. Liberty Mutual  
Mut. Ins. Co., 496 F.2d 131 (8th  
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- 2101(c), Title 28 U.S.C.S.....p. 1
- 49 U.S.C.S. § 304.....p. 2
- 49 U.S.C.S. § 1107.....p. 2
- 28 U.S.C.S. §§ 1332.....p. 7
- 2201.....p. 7
- 1291.....p. 7

Regulations:

- 49 C.F.R. Part 1057, et seq  
(ICC Lease and Interchange of  
vehicles).....p. 2,4,9

The official opinion of the Eighth Circuit Court of Appeals which we ask this Court to review is contained at 722 F.2d 1400 (8th Cir. 1983.)

STATEMENT OF THE GROUNDS ON WHICH  
THE JURISDICTION OF THIS COURT IS INVOKED

1. The Judgment of the United States Court of Appeals for the Eighth Circuit for which Petitioner seeks review was dated and entered on the 8th day of December, 1983. This was a new Opinion of the Eighth Circuit Court of Appeals which had vacated an earlier Opinion of the Eighth Circuit Court of Appeals.

2. There was no rehearing sought from the Circuit's new Opinion.

3. There is no cross-petition for Writ of Certiorari involved herein.

4. Pursuant to Section 2101(c) of Title 28 U.S.C.S., this Court has jurisdiction to review a judgment or

decree in a civil action rendered by a court of appeals.

#### FEDERAL REGULATIONS INVOLVED

The federal regulations which this case involves are contained at 49 U.S.C.S. Section 304; 49 USCS Section 1107, and 49 CFR, Part 1057, concerning lease and interchange of vehicles involved in interstate commerce activities. The pertinent text of these statutes and regulations are set forth in the accompanying appendix.

#### STATEMENT OF THE CASE

The underlying lawsuit arose out of a three-vehicle accident on July 9, 1979, near Belfield, North Dakota. A tractor-trailer unit owned by Hamel Service Company and driven by one Gilbert Culver, collided with an automobile driven by one Timothy Youngren. A truck driven by one Sheri Emch was also involved. As a result of this collision, one passenger in

the Youngren automobile died and three were injured.

At the time of the accident, the tractor-trailer unit owned by Hamel Service Company was subject to a three-year ICC equipment lease to Riechmann Enterprises, Inc., a regulated interstate commerce motor carrier. The owner of the tractor-trailer unit, namely Hamel Service Company, was not a regulated or authorized interstate commerce carrier or operator. At the time of the accident, the tractor-trailer unit leased to Riechmann Enterprises, the regulated carrier, had displayed on it the ICC permit number and insignia of Riechmann Enterprises, Inc. The truck was empty and was on its way to pick up a load of goods in Baker, Montana for return to the St. Louis, Missouri area. It is also undisputed that at the time of the accident involving the leased motor vehicle, the

leasing regulations promulgated by the Interstate Commerce Commission, and contained in 49 CFR, Part 1057 concerning lease and interchange of vehicles, were in effect. Furthermore, at the time of the accident, formal transfer of the possession of the truck had not been given back to the non-regulated truck owner. Therefore the leasing regulations and requirements concerning the truck were still in effect.

At the time of the accident, the regulated ICC carrier had a policy of liability insurance issued to it by Excalibur Insurance Company of Minnesota. That insurance was issued and delivered to specifically cover the operations of Riechmann Enterprises, the regulated carrier.

At the time of the accident, the truck owner, namely Hamel Service Company, had in effect a policy of garage liability insurance issued by the petitioner. Said

policy of insurance, however, was issued to cover the station operations, including related service garage operations, of Hamel Service Company. The policy was not issued to insure any ICC hauling operations. The policy excluded coverage for an automobile while rented to others by the insured.

A declaratory judgment action was tried in the United States District Court for the District of North Dakota, Southwestern Division, The Honorable Bruce M. Van Sickle presiding. Judge Van Sickle declared that the policy of insurance issued by Excalibur Insurance Company to the regulated carrier Riechmann Enterprises, provided the primary insurance coverage for the operation of the leased semi tractor-trailer unit involved in the accident. The District Court held that any insurance coverage of the petitioner was secondary or excess.



On appeal of that determination to the United States Court of Appeals for the Eighth Circuit, the Eighth Circuit reversed that part of the District Court's judgment and ruled that the garage liability policy issued by the petitioner to the truck owner was the primary insurance coverage and that the insurance policy issued by Excalibur Insurance Company to the regulated ICC carrier was merely secondary or excess. The Eighth Circuit specifically stated that the exclusion in the petitioner's policy for automobiles rented or leased to another did not apply, despite the undisputed fact that at the time of the accident the ICC lease agreement concerning the truck was in effect. The Eighth Circuit noted that although the accident involving the truck occurred during the period of the lease, at the time of the accident the owner (Hamel) had retaken control of the vehicle

and had embarked on a trip for its own benefit, and therefore the lease or rental exclusion would not be effective.

#### BASIS OF FEDERAL JURISDICTION BELOW

Jurisdiction in the United States District Court was based upon diversity of citizenship of the parties and the requisite amount in controversy, pursuant to 28 U.S.C.A., Sections 1332 and 2201. Jurisdiction in the Court of Appeals, whose judgment review is sought, is founded and based upon 28 U.S.C.A. Section 1291, and Rule 4, Federal Rules of Appellate Procedure, since the appeal to the Appeals Court by petitioner involved an appeal of a final judgment or decision from a district court.

#### ARGUMENT IN SUPPORT OF ALLOWANCE OF A WRIT

This Court should grant this writ and review the decision of the United States Court of Appeals for the Eighth Circuit for the following reasons:

a. The Eighth Circuit Court of Appeals has rendered a decision in conflict with the decision of other federal courts of appeal in the same matter, and in conflict with a decision of this Court (Transamerican Freight Lines, Inc. v. Brada Miller Freight System, Inc., 423 U.S. 28 (1975)). It has also decided this question in conflict with State courts of last resort on the same issue, (see Schedler v. Rowley Interstate Transp. Co., 368 N.E. 2d 128 (Ill. 1977) and Krieder Truck Service, Inc. v. Augustine, 304 N.E. 2d 1179 (Ill. 1979)), and the Eighth Circuit has also decided this case in conflict with one of its earlier decisions on the same issue. See Wellman v. Liberty Mutual Ins. Co., 496 F.2d 131 (8th Cir. 1974) - Re: "Control Issue".

b. The Federal Court of Appeals has decided an important question of federal law, which has not been, but should be

settled by this court, and petitioner believes that the Court of Appeals has decided this important question of federal law improperly and has not followed the express federal Interstate Commerce Commission leasing regulations involved herein, and petitioner seeks final direction from this court on an important question of federal law, concerning the ICC leasing regulations.

Petitioner submits that under the ICC leasing regulations found in 49 CFR 1057, that as long as the leased motor vehicle contains the ICC permit and insignia number of the regulated carrier, and as long as the lease agreement of the vehicle is in effect, then the vehicle, pursuant to the lease and these regulations, should be deemed to be in the exclusive possession and control of the regulated carrier and that that carrier should be obligated to respond in any damages out of

the operation of that truck. However the Eighth Circuit's decision stating that despite the fact that the ICC leases were in effect, and despite the fact that the regulated carrier's ICC permit number and insignia number were on the truck, that because of the factual situation involved, the regulated carrier did not have actual control or possession of the vehicle and that the control and possession was instead in the hands of the owner (petitioner's insured). Petitioner believes that this part of the Eighth Circuit's Opinion is in derogation of the express words and the public policy reasons behind the ICC leasing regulations, and that the regulations were meant to fix responsibility in the regulated carrier whenever the lease regulations were in effect, and that the regulations were imposed to prevent this type of arguing over who actually has

control of the vehicle and to protect this public in that fashion. That the Eighth Circuit's decision herein allows the factual question of actual possession and control to be interjected in a case subject to the ICC leasing rules and regulations, when it was the intent of the Interstate Commerce Commission to avoid such disputes and to fix absolute responsibility and control on the regulated carrier whenever the lease was in effect on the regulated motor vehicle.

Included in the accompanying Appendix are:

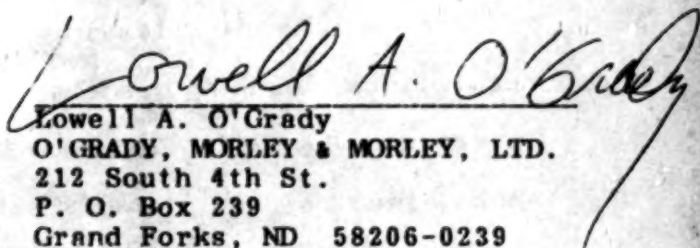
- (1) Opinion of Eighth Circuit Court of Appeals entered on December 8, 1983;
- (2) Memorandum and Order of the United States District Court entered May 5, 1982; Order of the United States District Court dated May 11, 1982; Judgment of the United States District Court dated August 18, 1982
- (3) Independent Contractor Transportation Agreement Equipment Lease; BMC980



**Endorsement for Motor Carrier  
Policies of Insurance;**

- (4) Federal Statutes; ICC Leasing  
Regulations.**

**Respectfully submitted this 2nd day  
of March, 1984.**

  
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